

- "1. What is the nature and extent of the claimant's disability, if any, as caused by the claimant's accidental injuries of April 1, 1993.

- "2. What is the liability for respondent for ongoing medical and treatment for the years subsequent to the asserted injuries.
- "3. Whether a causal connection exists between the conditions complained of and the alleged events of April 1, 1993 or whether there are pre-existing as well as intervening and superseding causes for the complaints made."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs and arguments of the parties, the Appeals Board finds:

(1) With regard to the nature and extent of claimant's disability resulting from the accidental injury of April 1, 1993, the Appeals Board agrees with the finding of a 15% permanent partial impairment by the Administrative Law Judge but concludes that the award should be paid as a loss of use of the forearm rather than of the arm. See K.S.A. 1992 Supp. 44-510d.

Claimant was diagnosed with carpal tunnel syndrome of her right upper extremity. This condition was described as a neuropathy at the level of the wrist with symptoms extending into the hand, thumb, index and middle fingers. Because claimant's injury and resulting disability extended above the hand to the level of the wrist, compensation should be based upon the scheduled number of weeks for the loss of use of a forearm. Although Dr. Lynn D. Ketchum rated claimant's impairment as 15% to the right upper extremity, it is clear that claimant's disability is not at or above the elbow and therefore cannot be considered as a loss of the arm pursuant to the statute. Otherwise, the Appeals Board agrees with the finding by the Administrative Law Judge that the opinion testimony of Dr. Ketchum is the more credible and reliable medical evidence in this matter and that his functional impairment rating should be adopted.

(2) Future medical treatment should be awarded only upon application to and approval by the Director.

At the time of the regular hearing claimant's condition was essentially asymptomatic. The only testimony indicating any need for ongoing treatment came from Dr. Ketchum, who in 1995 recommended that claimant "undergo some type of conservative management such as vitamin B₆ 100 mg 3 times a day for 6 to 8 weeks, and that she wear a splint at night." Claimant indicated that she had been instructed to wear a wrist splint at night by Dr. James S. Zarr. Despite the fact that she chose not to do so, her condition improved.

Both Dr. Ketchum and Dr. Bradley W. Storm testified that before there would be a need for future medical treatment, the claimant would need to engage in some activity or otherwise do something to herself which would aggravate her symptoms and cause the need for additional medical treatment. From this testimony the Appeals Board concludes that specific treatment is not contemplated at this time. Accordingly, future medical treatment should be awarded only upon application.

(3) Respondent disputes any causal connection between the claimant's work with the respondent and her carpal tunnel syndrome, arguing that there are preexisting as well as subsequent, intervening causes therefore. In particular, respondent points to claimant's subsequent employment with Harrah's Riverboat Casino as a dealer. Claimant, on the

other hand, testified that her employment with Harrah's did not aggravate her symptoms. Both she and her supervisor testified that dealers are instructed to use their fingers rather than their wrists, when shuffling and dealing cards. Dr. Ketchum confirmed that the claimant's job duties with the respondent were much more likely to cause her condition than would be her duties as a card dealer at Harrah's. Dr. Ketchum stated: "[Dealing] involves primarily an extensor movement of the fingers . . . there is more of a passive flexion rather than a strong, active flexion as one would have in grabbing, say, a dough bag or something of that nature, repetatively [sic] squeezing, (indicating). So that action, repetative [sic] flexion, is much harder on the tendons going beneath the transverse carpal ligament than the active extension. And so, to me, it would be an easier job, much easier job."

Dr. Storm, likewise, stated that claimant's job duties with the respondent most likely aggravated a preexisting subclinical carpal disease. However, he did not assign any permanent impairment to her condition.

Based largely upon the evidence that claimant had no hand or wrist symptoms prior to her employment with respondent, became symptomatic during such employment, and her condition improved upon leaving her employment with respondent, and given the testimony of both Dr. Ketchum and Dr. Storm, the Appeals Board finds that it is more probable than not that claimant's condition did arise out of and in the course of her employment with respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Alvin E. Witwer dated December 6, 1995 should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Marilyn S. Snow, and against the respondent, The Cafe Society, and its insurance carrier, Fireman's Fund Insurance Company, for an accidental injury which occurred on April 1, 1993 and based upon an average weekly wage of \$299, for a 15% permanent partial disability for 200 weeks in the total amount of \$8,970. Such amount is to be paid to the claimant in one lump sum.

Future medical treatment will be considered upon proper application to and approval by the Director.

The remaining orders of the Administrative Law Judge are hereby adopted by the Appeals Board and are incorporated herein by reference as if fully set forth to the extent they are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
John Boyd, Kansas City, MO
Matthew J. Stretz, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director